

Lib Industries, Inc. and Joseph Pezzano. Case 22–CA–21880

April 30, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
LIEBMAN

Upon a charge, first amended charge and second amended charge filed by Joseph Pezzano, an individual on February 19 and September 12, 1997, and January 27, 1998, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 11, 1998, against Lib Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On April 6, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 8, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 5, 1998, notified the Respondent that unless an answer were received by March 19, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Roselle, New Jersey, has been engaged in the transportation of solid waste. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its

business operations, purchased and received at its Roselle, New Jersey facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamsters Local 945, International Brotherhood of Teamsters, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On several dates beginning in October 1996, and intermittently through December 27, 1996, the Respondent threatened its employees that the Employer would shut down if they supported the Union. On several dates beginning in October 1996, and intermittently through December 27, 1996, the Respondent told its employees that it would be futile to support the Union.

On February 12, 1997, the Respondent discharged its employee Joseph Pezzano because he joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By discharging Joseph Pezzano, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Joseph Pezzano on February 12, 1997, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimi-

nation against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Lib Industries, Inc., Roselle, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that it will shut down if the employees support Teamsters Local 945, International Brotherhood of Teamsters, AFL-CIO or telling its employees that it would be futile to support the Union.

(b) Discharging employees because they join or assist the Union or engage in concerted activities or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Joseph Pezzano full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Joseph Pezzano whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharge of Joseph Pezzano, and, within 3 days thereafter, notify him in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Roselle, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the no-

tice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees that we will shut down if they support Teamsters Local 945, International Brotherhood of Teamsters, AFL-CIO or tell our employees that it would be futile to support the Union.

WE WILL NOT discharge employees because they join or assist the Union or engage in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Joseph Pezzano full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Joseph Pezzano whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge of Joseph Pezzano,

and, within 3 days thereafter, notify him in writing that this has been done.

LIB INDUSTRIES, INC.